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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1065

OIL WORKERS INTERNATIONAL UNION, ET AL.,
Petitioners and Appellants Below,

vs.

TEXOMA NATURAL GAS COMPANY,
Respondent and Appellee Below.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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I.

Opinions Below.

The memorandum opinion of the District Judge (Tr. 66) is reported at 58 F. Supp. 132. The opinion of the Fifth Circuit Court of Appeals (Tr. 338) is reported at 146 F. (2d) 62.

II.

Jurisdiction.

It is conceded that the petition for certiorari was filed herein within ninety days after the Fifth Circuit Court of Appeals overruled the petition for rehearing.

III.

Preliminary Statement.

The petition for certiorari on its face evidences petitioners' anomalous and inconsistent contentions:

(a) While fully conceding and recognizing that the War Labor Board has no power (even had it entered an order involving the matters here in issue) to enter an enforceable order (p. 16), they contend that the courts which do have power to make binding interpretations of contracts, have been deprived of their constitutional power to do so by the creation of the National War Labor Board. The Board itself makes no claim that it may supersede the jurisdiction of the courts in that respect.

(b) Although both petitioners and respondent after September 1, 1943, proceeded in their dealings with each other on the assumption that the contract was in force, petitioners now contend that such contract terminated on August 31, 1943.

The statement of "Questions Presented" (p. 5) and "Reasons Relied on for the Allowance of the Writ" (p. 6) and the brief presented in support thereof are based on entirely erroneous assumptions as to the issues which were involved in the determinations made by the District Judge and the Circuit Court of Appeals. The cases cited in the petition and the supporting brief have no relation to the issues which are actually involved in this proceeding.

Preliminary to a discussion of the facts, respondent makes it clear that no attack has been made on any order or proceeding of the National War Labor Board; that there is no outstanding directive of that Board with respect to any of the matters here involved; that there was not pending before that Board, either at the time the suit was filed or at the time the judgment was entered, any adversary

proceeding involving any of the matters which are here involved. No award has been "directed" by that Board.

Respondent further makes it clear that its suit was not for the purpose of obtaining an interpretation of any award or directive of the War Labor Board, or a determination of the rights of any of the parties under any such award or directive. Neither the District Judge nor the Circuit Court of Appeals undertook to interpret, or declare the rights of any of the parties under, any such award or directive. The suit involved only an interpretation of, and a declaration of the rights of the parties under, the contract between the parties entered into as a result of collective bargaining; and whether under the arbitration provisions of the contract respondent could be forced to accept unsatisfactory amendments of that contract—whether arbitration can be substituted for collective bargaining.

IV.

Statement of Facts.

The "Statement of Facts" set forth in the petition (p. 2) is incomplete. Because of the inadequacy of such statement and the erroneous assumptions contained in the application as to the issues involved, it is found necessary to supplement petitioners' fact statement in order that the Court, reading the erroneous assumptions set forth by petitioners, will not obtain an erroneous impression as to the issues which actually were involved below and determined by the District Judge and the Circuit Court of Appeals.

The fundamental differences between petitioners and respondent which brought about this litigation were

(a) whether respondent had a right to *comply with* the seniority provisions of the collective bargaining contract entered into between respondent and petitioners as agent

for respondent's employees, and the seniority list prepared by petitioners in accordance with such contract;

(b) whether, under the contract, respondent had a right to adopt a 48-hour workweek without first negotiating with petitioners a supplemental agreement; and

(c) whether the arbitration provisions of the contract were available to petitioners as a vehicle to bring about modifications of the contract with respect to Items (a) and (b).

The issue as to seniority is fully discussed by the District Judge in Section VII of his memorandum opinion (Tr. 83); the issue as to a 48-hour workweek in Section VIII (Tr. 92); and the question of arbitration in Section IX (Tr. 98). The District Judge sustained respondent's contention as to each of those differences between the parties. Since petitioners here did not complain in the Circuit Court of Appeals, and do not here complain, of any of his holdings on those fundamental differences, they must be held to recognize the soundness of the holdings on those points. Thus, in this Court, they must impliedly recognize that, as stated by the District Judge (Tr. 56), petitioners "made a mistake"; that in their contention as to seniority they acted in an unconscionable way (Tr. 56); that in their contention as to length of workweek they sought to infringe upon the rights of management under the contract (Tr. 58); and that in their contention as to arbitration they sought to force upon respondent amendments to the contract which can be brought about only by negotiation (Tr. 106).

Thus, on appeal, petitioners have abandoned all their contentions which brought about this litigation. Neither in the Circuit Court of Appeals nor here do they challenge the holdings of the District Judge on the merits of the controversy. In the Circuit Court of Appeals and here they

present only two claims, (a) that because of the creation of the National War Labor Board the District Court was deprived of jurisdiction to interpret and declare the rights of the parties under a collective bargaining agreement entered into in good faith between an employer and the duly selected and recognized bargaining agent of the employees, and (b) that the collective bargaining agreement between the parties had terminated prior to the arbitration in which respondent had participated with full reservation of its rights, and, therefore, the award of the arbitrators, though void, could not be declared invalid by the courts.

While it is believed that the mere statement of the contentions of the parties here demonstrates that the application for certiorari should be denied, a statement of the facts supplementing that set forth in the application will beyond question demonstrate that the issues set forth under "Questions Presented" (p. 5), under "Reasons Relied on for Allowance of the Writ" (p. 6), and under "Specification of Errors to be Urged" (p. 10) of the petition for certiorari and supporting brief are false issues, mere strawmen, having no relation to the real questions involved in this litigation.

Upon refusal of respondent to disregard the contractual provisions as to seniority and the seniority list prepared by petitioners themselves in accordance with that contract, and upon the adoption by respondent of a 48-hour workweek, petitioners' Workmen's Committee, on November 20, 1942, filed with respondent its "General Complaint," challenging the action of respondent in according to its employee, Ralph Orr, a certain seniority status and in the adoption of a 48-hour workweek (Tr. 142-143). Replying thereto on November 28, 1942, respondent insisted that its action with respect to employee Orr was in accord with the seniority list prepared in accordance with the contract, and that since the contract, by providing for payment of time

and one-half for all hours worked in excess of forty in any one week, recognized the right of management to determine the number of hours in a workweek, there was no ground for complaint (Tr. 144-148).[1]

Upon receipt of that letter the Workmen's Committee on December 3, 1942, advised respondent that it desired to arbitrate its complaint and had named a representative of the International Union as its arbitrator (Tr. 148). Thereupon, respondent through its superintendent, on December 11, 1942, made plain its contention that neither of those claims was a proper subject for arbitration.[2] In addition to stating again its positions with respect to the seniority of employee Orr and the question of a 48-hour workweek, respondent stated that it did not deem that a claim which would tend in any manner to amend or vary the terms of the agreement between the parties was a proper subject of arbitration and expressly declined to submit to arbitration any of the claims set forth in the complaint except the alleged discrimination (Tr. 151).

On January 12, 1943, the Director of the United States Conciliation Service inquired of respondent as to its reason for refusal to arbitrate (Tr. 210). Respondent replied in substance that the Company had agreed to arbitrate that portion of the complaint which charged discrimination, but had refused to arbitrate the other matters contained in the complaint because it was deemed that both the question of seniority and the question of length of workweek were controlled by the contract and cited the holding of the New

1. Comment has already been made on the circumstance that petitioners here did not appeal from the holding of the District Judge that they were wrong and respondent was right, under the express provisions of the contract, as to both matters involved in the complaint.

2. In the complaint (Tr. 143) it was stated that the Company had discriminated against Union men. In the letter of December 11, 1942, respondent expressed its ignorance of the discriminatory acts complained of, but recognized that if there was a complaint based on discrimination, it was an appropriate matter for arbitration. Nothing further was done with respect to the asserted discrimination, and that portion of the complaint is not involved in this proceeding.

York Supreme Court in *Gleason* v. *Debevoise Company*, 11 Labor Relations Reporter, 545, to the effect that an employer need nor arbitrate with the Union a question concerning a matter which was set forth in unambiguous language in the contract. It insisted that the only medium through which the contract could be changed was the process of collective bargaining by which the parties arrived at the provisions of the existing contract, stating that the Company was willing to abide by the terms of the contract as written and expected like conduct from the Union (Tr. 211-215).

Upon the failure of the Conciliation Service to bring about an agreement, the matter was certified by its Director to the National War Labor Board (Tr. 219), which appointed a tripartite panel (Tr. 223).

A majority of that panel sustained the Union's contentions, ordering the Company and the Workmen's Committee to enter negotiations for the purpose of providing, by supplemental agreement, for placing Orr at a different position on the seniority list and to enter into a supplemental agreement as to the 48-hour workweek (Tr. 224).

Wales Madden, the chairman of the panel and the public representative, vigorously dissented from the holdings of the majority, both on the merits and as to whether or not the War Labor Board should accept jurisdiction of the dispute at all. He expressed the view that the Board should decline to accept jurisdiction over the disputes on a merit basis but should exercise its general jurisdiction to the extent of instructing the parties to follow the arbitration provisions of their bargaining contract before presenting their differences to the War Labor Board (Tr. 232). In such recommendation he said:

> "I agree with the Company in its position that the National War Labor Board cannot and should not, if it could, rewrite the contract between the Company

and the Union. I think that except where ambiguities in the contract exist the contract should be meticulously followed in determining the rights and obligations of the parties, and that even where ambiguities exist, the Board or other judicial or quasi-judicial body with jurisdiction over a controversy arising out of it should not feel free to interpose its ideas as to what the contract should have provided but should confine its endeavors to an honest effort to determine the real intention of the parties at the time the ambiguous language was used."

He further expressed the view that:

"If * * * a board of arbitrators patently disregarded the plain provision of the contract, entertained jurisdiction over the objection of the Company, and disposed of the case contrary to the provisions of the contract, then surely the aggrieved party could resort to this Board and probably to the Courts for relief." (Tr. 229.)

Upon appeal from the tripartite panel the Regional War Labor Board for the Eighth Region, as of July 3, 1943, adopted the minority recommendation of the chairman and public member of the panel in which he recommended that the Board decline to accept jurisdiction over the disputes on a merit basis and directed the parties to proceed with the arbitration of the issues in the case as provided for under the terms of the collective bargaining agreement in force and effect (Tr. 241).

In accordance with that directive, respondent, on July 9, 1943, selected Ross Rogers as a member of a board of arbitrators (Tr. 242). The Workmen's Committee selected J. W. Poe, Secretary-Treasurer of the Union, as its designee. Respondent's challenge of the qualifications, by reason of interest, of Mr. Poe as an arbitrator (Tr. 248) was rejected by the National War Labor Board on September 24, 1943 (Tr. 251). Thereupon, the selected arbitrators designated a third member of the Board.

On October 8, 1943, respondent made clear to the members of the Board of Arbitrators that it was entering into same under coercion of the order of the War Labor Board and that, as set forth in the report of the panel, the issues to be determined were

(1) whether the Company had a right to place employee Orr on the job of main engineer without first having reached an agreement with the Union that this might be done; and

(2) whether the Company had a right to go on a 48-hour workweek without first reaching an agreement with the Union to that effect.

It pointed out to the arbitrators that they had not been asked to compromise any part of the dispute or to rewrite, extend, or write into the present contract any provision or agreement not already contained therein. It stated that if the decision of the arbitrators should fall outside the scope of the existing agreement and the issues submitted, the Company might elect to take such further action as might be necessary to protect itself (Tr. 166-167).

On October 20, 1943, the Board of Arbitrators, by a divided vote, entered its award (Tr. 30) holding that employee Ralph Orr should be immediately removed from the engine room and his name removed from the seniority list, and that the Company should reimburse affected employees for the difference between what they actually made and the amount they would have received if that employee had not been placed in the engine room; that the Company did not have the right to go on a 48-hour workweek without first reaching an agreement with the Union that this might be done; and ordered that the employees demoted to a lower classification as a result of the 48-hour workweek be paid the higher rate of pay received at the time of demotion, that any employee demoted to a lower classification be

allowed to return to the classification he held prior to the inauguration of the longer workweek after the war emergency, and the re-establishing of a 40-hour workweek, *and that this be provided for in a supplemental agreement to be attached to the main agreement* (Tr. 34).

The arbitrator Rogers dissented from the holdings of the majority, referred to the opinion of Mr. Madden of the tri-partite panel, and expressed the judgment that the majority of the arbitrators had gone far afield in their awards and exceeded their jurisdiction under the provisions of the contract in respect to arbitration and the jurisdiction of the arbitrators under the directive of the National War Labor Board.

On October 27, 1943, five days after the award of the Board of Arbitrators, respondent filed in the United States District Court for the Northern District of Texas its complaint (Tr. 1) against the Union and the members of the Workmen's Committee, setting forth the history of the controversy, including the award of the Board of Arbitrators, and alleging that the award of the arbitrators was void because they had sought to go outside the arbitration provisions of the contract, because the matters covered by the arbitration award were expressly covered by the contract, and, therefore, not subject to arbitration, because the award of the Board was in excess of its powers in purporting to engraft new and additional terms onto the contract between the parties and to direct payment of certain moneys to certain employees, and because the Secretary of the Union was not a qualified arbitrator.[3]

Respondent sought a declaratory judgment of the District Court

(1) That the status of employee Orr was determined

3. Respondent at the trial dismissed without prejudice that portion of the complaint which attacked the qualifications of such arbitrator.

by the seniority list prepared under the provisions of the contract, and the question of his seniority was not arbitrable;

(2) That the Company's right to determine the length of the workweek, subject only to the requirement that for all hours worked in excess of forty for any one week it pay time and one-half, was not arbitrable;

(3) That the award of the Board of Arbitration was in excess of its powers, purported to require respondent against its will to modify the provisions of the contract as to matters not arbitrable, purported to award relief far beyond the powers of the Board, and was in all things void (Tr. 27).

As already pointed out the District Judge sustained respondent's position as to each of those matters, the judgment providing

(1) That under the contract between the parties the status of employee Orr was determined by the seniority list prepared under the seniority provisions of the contract, and the question of his seniority was not arbitrable under the arbitration provisions of the contract;

(2) That under the provisions of the contract respondent had an inherent right to determine the length of the workweek, subject only to the requirement that for all hours in addition to forty in any one week, it pay time and one-half, and that this issue was not arbitrable;

(3) That the purported award of the majority of the Board of Arbitrators was wholly void because it purported to deal with non-arbitrable matters and purported to grant relief beyond the powers of arbitrators under the provisions of the contract (Tr. 111).

As already pointed out, none of those findings of the District Judge was attacked by petitioners in the Circuit

Court of appeals, and none of such findings is attacked here.

The foregoing is a sufficient statement of the facts to permit a consideration of petitioners' contention with respect to the Court's jurisdiction as affected by the creation of the National War Labor Board; and there remains for consideration the facts dealing with whether the contract between the parties terminated on August 31, 1943.

The collective bargaining agreement between the parties, dated August 27, 1942, provided that it should become effective upon September 1, 1942, and that

> "It shall remain in effect from year to year thereafter until terminated by written notice given by either party to the other at least thirty (30) days prior to the termination of any such period." (Tr. 114.)

Therefore, unless, thirty days prior to September 1, 1943, written notice of termination was given by one party to the other, the contract automatically was renewed to August 31, 1944.

In their answer filed November 26, 1943, petitioners herein alleged that

> "on July 30, 1943, defendants notified plaintiff by letter * * * of their desire to *amend* the collective bargaining agreement, which by operation of law terminates said agreement." (Tr. 41.)

In that letter (Tr. 128) J. W. Poe, Secretary of the Union had said:

> "This is to advise you that we desire to meet with your Company on Monday, September 6, 1943, at ten o'clock A. M. to negotiate amendments to the present collective bargaining contract now in effect between Texoma Natural Gas Company, and Oil Workers International Union,"

and requested that the chairman of the Workmen's Com-

mittee be contacted and a suitable place for the meeting arranged.

Acknowledging receipt of that letter respondent, through its Superintendent of Production, inquired:

> "Will you please advise whether such letter is intended to serve as a notice of termination of the contract between the Union and the Company in accordance with Section 1, Article I, of the Collective Bargaining Agreement." (Tr. 128.)

In reply, the Secretary of the Union said:

> "Relative to your inquiry if my letter of July 30, 1943, was intended to serve as a notice of termination of the contract between the Union and the Company, as set out in Section 1, Article I, of the Agreement, I wish to say that we did not intend to cancel the entire Agreement but do wish to make certain amendments to the contract for the purpose of clarification. I have not read the amendments that the employees have prepared, therefore, I am not now in position to state these amendments.
>
> "If you do not desire to go into negotiations to make such amendments without terminating the present Agreement, we shall then naturally ask to terminate the present Agreement and proceed to negotiate another one.
>
> "However, until such time you are notified to this effect the present agreement shall be in full force and effect."[4] (Tr. 129.)

Following receipt of that letter respondent's Superintendent of Production, on August 24, 1943, wrote the Union as follows:

> "This will acknowledge receipt of your letter of August 20, 1943, advising that it was not the intention by your letter of July 30, 1943, to cancel the agree-

4. The last sentence of the foregoing quotation is garbled at Tr. 130 by the omission of the words "the present agreement shall be in full force and effect." The correct copy of the paragraph is set forth in the Court's opinion at Tr. 80.

ment between this Company and the Union, but that the Union simply wishes to make certain amendments for the purpose of clarification. We therefore consider the Agreement, as now written, binding on both parties until September 1, 1944; however, the Company is agreeable to meeting with representatives of the Union September 6, 1943, for the purpose of considering clarifying the amendments of the Agreement.

"The Company may have certain suggestions to offer for clarifying the Agreement which it may propose at the time of the meeting of the representatives of the Union and the Company on September 6." (Tr. 130.)

Following the exchange of those letters, negotiations for amendments to the contract were carried on, and those negotiations were still in progress at the time of the trial (Tr. 81).

Meanwhile, long after August 31, 1943, to-wit, on October 8, 1943, the parties proceeded to an arbitration under the contract (Tr. 166) as directed by the War Labor Board, and on October 20, 1943, the Board of Arbitrators (one of whom was the Union's Secretary) entered its order directing the execution of supplemental agreements "to be attached to the main agreement" (Tr. 34). The award expressly stated that it was the duty of the arbitrators

"to take into consideration *only* the articles of the agreement signed by both parties and placed in effect on September 1, 1942."

The Secretary of the Union testified on December 6, 1943, that Article III of the contract dealing with seniority and Article V of the contract dealing with holiday pay were in effect. He said:

"*The entire contract* is in effect until a new one is negotiated or amended." (Tr. 141.)

Later, being recalled by counsel for petitioners, he stated that he had discussed the contract with his attorney

and with the International officers; that after hearing the opinion of counsel and the International officers he thought the contract was *not* in effect; that he reached that conclusion by reason of *advice on the law only* (Tr. 262).

Witness Moore, chairman of the Workmen's Committee, gave similar testimony. He said that he had discussed the matter with petitioners' counsel and the International officers; that when they wrote respondent's Superintendent of Production "a letter to amend the contract", they thought the contract was in full force and effect, but that

> "*after talking with our attorney* we see that the contract is not in effect." (Tr. 261.)

The District Judge, upon the conclusion of evidence, said:

> "I hold that the contract is in effect. I hold that the evidence is undisputed that it is in effect; every circumstance and all of the evidence of everybody all the way through, letters included, show that it is in effect." (Tr. 66.)

Whether or not the contract had terminated is fully discussed by the trial court in Section VI of his memorandum opinion (Tr. 77-83). The Circuit Court of Appeals on that point said:

> "We agree with the Court below that the contract is in force and effect."

V.

Reply to "Questions Presented".

Under the heading "Questions Presented" petitioners propound four queries which they think should be answered by this Court. Each of those queries presents an erroneous interpretation of the holdings of the District Judge and the Circuit Court of Appeals. They are here briefly discussed in the order set out in the application.

1. There is here involved no "award" of the National War Labor Board, and it is, therefore, not material whether an award of that Board, having no legal and binding effect on the parties, would constitute or create such a justiciable controversy or actual controversy as would be sufficient to vest jurisdiction in a Federal Court under the Declaratory Judgments Act.

No complaint was made by respondent of any action of the War Labor Board. The only order of that Board was one requiring the parties to arbitrate *under the provisions of their contract* the matters in dispute. In promulgating that directive the Board assumed that arbitrators would not "dispose of the case contrary to the provisions of the contract" (Tr. 229). The Board reserved no supervisory control over the action of the arbitrators, by appeal or otherwise. It merely directed the parties to proceed to an arbitration of their differences *under their contract.*

Obviously, respondent suffered no legal injury by this directive, whether it was legally enforceable or not. It could proceed as it did, to compliance with the directive, fully preserving its right to insist that the differences were non-arbitrable.

When, however, the report of the arbitrators, purporting to act under the contract was filed, a different situation was presented. A justiciable controversy between the parties existed, even when the complaint was filed, both as to the interpretation of the contract and the arbitrability of the differences. That controversy became more acute upon the filing of the purported award. An additional justiciable controversy as to the validity of the award and respondent's legal liabilities thereunder then arose.

That purported "award" undertook to *require* respondent to disregard its contractual obligations to one of its employees, to remove from the engine room an experienced

employee, and strike his name from the seniority list; to reimburse other employees for the differences between the wages that they had received, and the wages they would have received if that employee had not been placed in the engine room; to require that all employees automatically demoted as a result of the adoption of a 48-hour week be paid at the higher rates of pay they would have received but for such demotion; and that a supplemental agreement be entered into providing that after the war emergency, and upon returning to a 40-hour workweek those demoted would be advanced to their original classification. Any individual employee obtaining purported rights under such award could have instituted suit against respondent for enforcement of such award if it were valid.

Clearly, respondent could not be expected to wait longer to obtain a declaration of its contractual rights and the validity of the award. The award of the arbitrators was entered fourteen months after the controversies first arose. Respondent was faced with an intolerable situation in its operations, with continuing obligations to some employees if the award of the arbitrators was valid, and to other employees if the award was invalid. Under such circumstances, there was nothing for it to do except to obtain a declaration of its rights and obligations under its contract and the award, binding and not merely advisory.

Obviously, no relief could be obtained through the War Labor Board. In directing an arbitration under the contract, it had reserved no control over the award, by appeal or otherwise.

Even if jurisdiction had vested in the Board to enforce the award, its directive would have been expressly subject to discontinuance if a court should hold the award invalid. The Board fully recognizes that an order of enforcement in no way prejudices the right of a party to appeal to a

court of competent jurisdiction for a judicial declaration of the rights and obligations flowing from the award, and accords to courts a power which it concedes it does not possess,—the power to make a judicial declaration of the rights and obligations of parties (Tr. 259).

That the award of the arbitrators (not a directive of the War Labor Board) created an actual justiciable controversy cannot be denied. The first "question presented" obviously seeks to present a false issue.

2. For the same reason, the second "question presented" (p. 16 of application) is a false issue. There has been no award directed by the War Labor Board. No administrative remedy of Review of the award of the arbitrators by the War Labor Board was available to respondent.[5] If the Board had a right of review, it would not constitute a "remedy" since its action would only be advisory.

The assumption that issues arising under the award were "currently pending before said Board for adjudication, settlement and final determination" is wholly without support. Nothing whatever was pending before the Board when the complaint was filed in the District Court.

On October 28, 1943, the day after the suit was filed, the Union requested the Regional War Labor Board to enforce the award. That Board did nothing about the request, except to refer the letter to its legal division (Tr. 169). Although the case was not tried until December 6, 1943, that division took no steps toward enforcement of the award, and entered no appearance in this proceeding,—another recognition by the Board that determinations of the validity of such contract arbitrations are for the courts.

3. Respondent finds no fault with the affirmative of the

5. Even if Section IV of the Board's statement of policy (Tr. 259) were found applicable to contract arbitrations made under a directive, a review thereof could be obtained, as stated therein, only on the Board's "own initiative".

query "Should a declaratory judgment be denied where another remedy will be more effective under the circumstances." It is merely the announcement of a principle many times applied by the Courts. The difficulty in petitioners' case is that they do not point out *any* other effective remedy.

When the award of the arbitrators was filed, it became necessary for respondent either to comply with the award, and thus deprive some of its employees of rights under the contract, lose the services of an old and valued employee, and continue its operations at much higher costs, or to refuse to comply with the award, and become embroiled with differences as to rates of pay of another group of employees, possibly resulting in litigation in either event.

It was not required to wait for these disturbances to arise and confuse its operating problems. As well observed by the Circuit Court of Appeals (at 146 F. (2d) 65) it was not required to wait until sued for damages for breach of contract or for specific performance. Declaratory judgment proceedings were available as a means of "securing an interpretation of the contract during its actual operation" and "stabilizing an uncertain and disputed relation."

It is clear that the reasoning of this court in *Moore* v. *Illinois Central R. R. Co.*, 312 U. S. 630, 635, (dealing with the Adjustment Board provided for by the Railway Labor Act[6]) applies here. The machinery provided by the War Labor Disputes Act and Executive Order No. 9017 was not based on a philosophy of legal compulsion but for the purpose of establishing a system for peaceful adjustment and mediation voluntary in its nature.[7]

It is conceded by petitioners that the functions of the

6. 45 USC, Sec. 153(i).

7. See also *Adams* v. *N. Y. C. & St. Louis Ry. Co.*, 7 Cir., 121 F. (2d) 808; *Pennsylvania R. Co.* v. *U. S. R. Labor Board*, 261 U. S. 72, 84; *Pennsylvania Ry. System* v. *Pennsylvania R. R. Co.*, 267 U. S. 203, 216.

Board are advisory only, that its so-called directives are not enforceable or reviewable. Thus, at page 13 of petitioners' supporting brief, they say

> "even if petitioner should have obtained an order of said Board enforcing said award, such award would not be reviewable or enforceable."

Again at page 16,

> "It is plain that the issuance of the directive order of the National War Labor Board, directing the parties to arbitrate, and that any further order directing compliance therewith, did not and would not in any wise affect the legal rights of the respondent, and that its continued effectiveness could not and would not affect such rights."[8]

Since it is conceded that the National War Labor Board has no power to make a binding determination of the validity of the arbitration award, it is obvious that there was no effective remedy available to respondent except a judicial determination of its rights. Therefore, even if an appeal could have been taken to the War Labor Board, or if proceedings for enforcement had been pending there, a suit for declaratory judgment would still have been an appropriate remedy available to respondent.

Petitioners erroneously assume throughout the petition and supporting brief that respondent has challenged some action of the National War Labor Board. It has not done so. It sought only a determination of its rights under its contract, and the validity of an award resulting from an arbitration under its contract.[9]

8. On this point, see *Baltimore Transit Co.* v. *Flynn* (D. C. Md.) 50 F. Supp. 382, 387; *Employers Group of Motor Carriers* v. *National War Labor Board* (U. S. App. D. C.) 143 F. (2d) 145, 149; *National War Labor Board* v. *Montgomery Ward & Co.* (U. S. App. D. C.) 144 F. (2d) 528, 530.

9. The fact that respondent, with full reservation of its rights, entered into the arbitration under a directive of the War Labor Board, does not make the award an award of that Board. It is still an award purportedly made under the contract, and respondent's rights are the same as they would have been if the arbitration had been participated in by respondent, with the same reservation, without any previous directive (advice, to use petitioners' definition) of the Board.

In *Lehigh Coal & Navigation Co.* v. *Central R. R. of New Jersey* (D. C. E. D. Pa.) 33 F. Supp. 362, 365, Judge Kalodner well summarized the decisions interpretive of the Declaratory Judgments Act as establishing the following principles:

That a prerequisite to relief is the existence of a definite and concrete controversy, touching the legal relations of parties having adverse legal interests; that such a judgment should be granted where it will serve a useful purpose in clarifying and settling legal relations and will terminate and afford relief from insecurity, uncertainty and controversy; that the discretion to grant or refuse relief should be liberally exercised to effectuate the purposes of the Act, and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; that the primary object of the Act is to afford a speedy and inexpensive method of adjudicating legal disputes before damage has actually been suffered, and the statute should be liberally construed to that end; that construction and interpretation of legal instruments is the principal function of a declaratory judgment proceeding; and that the existence of another remedy does not preclude relief.[10]

It is respectfully submitted that the entry of a declaratory judgment in this case is fully justified by those principles.

4. Whether notice of a desire to "amend" a contract constitutes a termination is not the issue. The issue is whether under the facts of this case the notice which was given did terminate the contract. Both the trial judge and the Circuit Court of Appeals held that under the facts there was no termination. This Court therefore will require conclusive evidence of termination before it will set aside that finding, and such evidence does not appear in the record.

10. It is expressly provided in Rule 57 of the Rules of Civil Procedure that the existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

The notice (Tr. 128) given was not one of termination. It only expressed a desire to "negotiate amendments." Even the author of the letter did not know the purport of the desired amendments. When asked by respondent the direct question whether the letter was intended to serve as a notice of termination (Tr. 128), he disclaimed any such intention, stating that the Union did not intend to cancel the agreement, but did wish to make certain amendments "for the purpose of clarification"; that he had not read the proposed amendments, and was not in a position to state them (Tr. 129).

In that letter he said

> "If you do not desire to *go into negotiations* to make . . such amendments without terminating the present agreement, we shall *then* naturally ask to terminate the present agreement and proceed to negotiate another one. However, until such time (as) you are notified to this effect *the present agreement shall be in full force and effect.*"

It is not denied that the Company, after receiving that letter, did "go into negotiations" concerning the proposed amendments, and that such negotiations were still in progress when this case was tried in the District Court. It is not claimed that any notice of cancellation was ever sent unless the letter of July 30, 1943, was such a notice.

After September 1, 1943, the parties carried on, *under the contract*, the purported arbitration. The author of the letter of July 30, 1943, acted as an arbitrator. The award, signed by him, purported to require respondent to remove an employee from the seniority list, prepared and existing under the authority of the contract, to negotiate a supplemental agreement to be attached to the main agreement, and to "abide by the terms of the collective bargaining agreement" in its future dealings with its employees (Tr. 34-35).

This same author of the letter of July 30, 1943 at the trial testified that "the entire contract is in effect until a new one is negotiated or amended" (Tr. 270). He later testified that after discussing the matter with his attorneys and with the International officers, and hearing their opinions, he thought the contract was *not* in effect, but that he reached that conclusion *by reason of advice on the law only* (Tr. 274-275).

Clearly, the evidence does not even raise the issue, much less conclusively establish, that the contract had terminated. It was never so considered by either the Union or the Company. Without regard to what might have been held to be the meaning and purpose of the letter of July 30, 1943 (Tr. 147), considered alone or other circumstances, petitioners are bound by the interpretation placed on that letter by the letter of August 20, 1943 (Tr. 129).

VI.

Reply to "Reasons Relied On for the Allowance of the Writ".

The so called "reasons" urged by petitioners in support of the petition (p. 6 of the petition) are, like the "questions presented", founded on erroneous assumptions of fact, and misinterpretations of the holdings of the Circuit Court of Appeals. Respondent replies to such reasons in the order set forth in the application.

A. There has been no holding of the Circuit Court of Appeals that "an arbitration award directed by the National War Labor Board creates a justiciable controversy." No award has been directed by the Labor Board. It only directed respondent to arbitrate under the provisions of the contract. No complaint is herein made of that directive. The complaint is as to the scope of the

award. The justiciable controversy is as to the legal rights and liabilities of the parties under their contract, not their legal rights and liabilities under any directive (advice) of the Labor Board. This clearly appears from the following extract from the opinion of the Circuit Court of Appeals:

> "The Court below found that the controversy between the parties related to their legal rights and liabilities *under their contract;* that the parties had taken adverse positions with respect to their respective rights and obligations; that, therefore, a justiciable controversy existed appropriate for judicial determination under the Declaratory Judgments Act. We agree" (Tr. .....).

It is clear that so-called "reason" A is based on erroneous assumptions as to the holdings of the Circuit Court of Appeals. There is, therefore, no conflict between the holdings of the Circuit Court of Appeals and the holdings of the United States Court of Appeals for the District of Columbia in *Employers Group of Motor Carriers* v. *N. W. L. B.*, 143 F. (2d) and *N. W. L. B.* v. *Montgomery Ward & Co.*, 144 F. (2d) 528.

B. "Reason" B is also based on an erroneous assumption since the Circuit Court of Appeals did not hold that courts have jurisdiction to review or determine "issues growing out of National War Labor Board directives even while such issues are pending before such Board." The issues here involved grow out of the contract, not out of any directive, and the Court's holding was that the Court would have had jurisdiction to determine the judicial questions involved even if a controversy with respect thereto had been pending before the Board.[11]

11. The Court below cited the Employer's Group of Motor Carriers case in support of its holding that the National War Labor Board is not, under the law, vested with judicial functions, and has no power to enforce its determinations, called "directives"; that it is not a substitute for the courts; and that the pendency of a controversy before it is not a bar to a suit in the courts.

C. Nothing said in the opinion of the Circuit Court of Appeals in this case is in conflict with any of the holdings in any of the cases referred to on page 7 of the application.

In *Aetna Casualty Company* v. *Quarles*, 92 F. (2d) 321, the Court merely exercised its discretion in refusing to enter a declaratory judgment because such a judgment would not settle the matter, and there was then pending *in a court of competent jurisdiction* a suit in which all matters in controversy could be determined.

Respondent has been unable to understand in what way petitioners contend that the opinion of the Circuit Court of Appeals in this case is in conflict with the opinion of the United States Circuit Court of Appeals for the District of Columbia in *Washington Terminal Co.* v. *Boswell*, 124 F. (2d) 235 (judgment affirmed by equally divided court 319 U. S. 733). That case related to an interpretation of the Railway Labor Act of June 21, 1934, 48 Stat. 1185, 45 USCA Sec. 151 *et seq.*, and to whether parties who had submitted their differences on the merits could, by declaratory judgment proceedings, attack the award. The Court, in holding that they could not do so, stressed the enforcement provisions of that Act which are not contained in the Act or the Executive Order creating the National War Labor Board.

The reasoning of the majority opinion in that case is in complete harmony with the holdings of the Circuit Court of Appeals in this case.

Nor is the holding in this case in conflict with the holdings in *Utah Fuel Co.* v. *National Bituminous Coal Commission*, 101 F. (2d) 426. The Act there involved contained express provisions for judicial review, and it was only held that the prescribed method of review was exclusive.

Clearly, "reason" C relied on by petitioners does not support the petition, both because no dispute was pending before the National War Labor Board at the time respondent filed its suit and because the Act creating the Board provides for no administrative review.

D. The holding of the trial judge, and the Circuit Court of Appeals that the contract was in force was not a determination of either Federal or local law. It was a determination of fact, fully supported by the evidence. There is no evidence on which a different finding could be based.

E. There is no contrariety of view among the courts which requires an "authoritative and elucidating decision" as to the powers of the National War Labor Board, or which calls for an exercise of this Court's power of supervision. Both petitioners and respondent recognize that the recommendations of that Board are advisory only, not binding. It it is important that administrative action should be binding, that is for the Congress to determine. In this case, however, no action of the Board is challenged, and the question is academic.

Obviously, collective bargaining agreements should be stable. The stability of contracts, however, will best be promoted if all parties comply therewith. It will not be promoted by the action of either employer or employee, reflecting attempts to avoid contractual obligations or attempts, through invalid awards in arbitration proceedings, to effectuate amendments of contracts,—a matter for negotiation and agreement.